

A **Kathirsean a/l Kumarasan v Punaswarthy a/p K Shanmugam**

B HIGH COURT (PULAU PINANG) — DIVORCE PETITION NO
33-858-10 OF 2011
CHEW SOO HO JC
1 JUNE 2012

C *Family Law — Maintenance — Wife — Whether mere fact wife could sustain
herself on own salary not reason to deny her maintenance — Whether court had to
look at living standard wife enjoyed during subsistence of marriage and allow
standard to continue — Whether husband's insistence wife look presentable made
her spend more on herself cosmetically — Whether sum so spent fair amount to be
D awarded as maintenance*

E The husband's petition and the wife's (respondent's) cross-petition both sought
the dissolution of their marriage. In addition, the respondent asked that the
petitioner be ordered to pay her RM2,000 monthly maintenance and
F RM13,415.21 owing to a bank on a loan taken to buy a car registered in her
name. The said amount was the balance owing after the car had been
repossessed and sold. The petitioner argued that since the respondent earned a
monthly salary of RM3,371 it was sufficient for her to maintain herself and
there was no need for him to pay her maintenance. He said he only earned a
G RM5,000 salary monthly and intended to remarry. He also said the car was
bought in the respondent's name and for her sole use and therefore she should
bear whatever sum was owing to the bank. The evidence showed that when the
parties were living together he had been paying the monthly instalments for the
car but for some reason stopped paying it, causing the car to be repossessed and
sold. The respondent testified that she was a 'simple person' before the marriage
but thereafter, on the petitioner's insistence that she look 'presentable', she
spent about RM1,000 per month from her own salary on cosmetics, clothing,
fitness, perfume and hair salons.

H **Held**, ordering the petitioner to pay the respondent RM1,000 per month
maintenance for four years from the date of the order and RM13,415.21 being
the balance due under the car loan, with costs:

I (1) Although the respondent was gainfully employed the mere fact she could
sustain herself with her salary was not a key factor which disentitled her
to maintenance. The court had to look into her needs, that she had been
living a standard she had enjoyed or had been provided during her life
together with the petitioner. She should not be deprived from continuing
to enjoy the same standard of living she used to enjoy during the existence
of her marriage (see paras 5-6).

- (2) The evidence showed the respondent was initially a simple lady but after marriage she had to spend more to upkeep herself to be presentable as encouraged by the petitioner. Hence, it was not odd or unreasonable that the respondent needed to continue to maintain herself in that standard. When the parties lived together the petitioner paid for the house rent, utilities, car instalment and petrol all which the respondent had to bear on her own since living apart. As such, RM1,000 monthly as maintenance was a fair sum to allow her to continue in the standard she had been living. The sum was well within the petitioner's means and taking into consideration the fact the respondent was also gainfully employed and the petitioner intended to remarry (see paras 6–8). A B C
- (3) Although the car was purchased by the petitioner in the respondent's name and allegedly for her sole use, the evidence showed the petitioner used the car most of the time. She had hardly driven the car. Even after the respondent was allegedly forced out of the matrimonial home, the petitioner kept the car and refused to give it to her. Since the petitioner had been paying for the car instalments and had continued to be in possession and in use of the car until it was repossessed, it was only just and reasonable that he should bear the sum owing to the bank which was in fact created by his own default (see para 10). D E

[Bahasa Malaysia summary]

Petisyen suami dan petisyen balas isteri ('responden') kedua-duanya memohon untuk pembubaran perkahwinan mereka. Sebagai tambahan, responden meminta bahawa pempetisyen diperintahkan untuk membayar nafkah RM2,000 setiap bulan kepadanya dan RM13,415.21 yang terhutang kepada sebuah bank untuk satu pinjaman yang dibuat bagi membeli kereta yang didaftarkan atas namanya. Jumlah tersebut merupakan baki terhutang selepas kereta tersebut ditarik milikan dan dijual. Pempetisyen menghujah bahawa memandangkan responden memperoleh gaji bulanan sebanyak RM3,371 maka adalah mencukupi bagi responden untuk menyara dirinya dan tiada keperluan bagi pempetisyen untuk membayar nafkahnya. Pempetisyen berkata bahawa dia hanya memperoleh gaji bulanan sebanyak RM5,000 dan bertujuan untuk berkahwin semula. Dia juga mengatakan bahawa kereta tersebut dibeli atas nama responden dan untuk kegunaan responden sendiri dan oleh itu responden seharusnya menanggung apa-apa jumlah terhutang kepada bank. Keterangan menunjukkan bahawa apabila pihak-pihak tinggal bersama, pempetisyen telah membayar ansuran bulanan untuk kereta tersebut tetapi disebabkan sesuatu alasan berhenti membayarnya, mengakibatkan kereta tersebut ditarik milikannya dan dijual. Responden memberi keterangan bahawa dia merupakan seorang yang berperwatakan 'ringkas' sebelum perkahwinan tetapi selepas itu, atas desakan pempetisyen bahawa responden perlu tampil 'rapi', responden telah membelanjakan RM1,000 setiap bulan F G H I

A daripada gajinya sendiri untuk kosmetik, baju, kecergasan, haruman dan salun rambut.

B **Diputuskan**, memerintahkan pempetisyen untuk membayar nafkah RM1,000 setiap bulan kepada responden selama empat tahun daripada tarikh perintah dan RM13,415.21 yang merupakan baki terhutang di bawah pinjaman kereta dengan kos:

C (1) Walaupun responden bekerja, fakta bahawa responden dapat menyara dirinya dengan gajinya bukan merupakan satu faktor yang menafikan haknya untuk nafkah. Mahkamah perlu melihat keperluannya, bahawa dia menjalani standard kehidupan yang telah dinikmatinya atau yang telah disediakan semasa kehidupannya bersama dengan pempetisyen. Dia tidak seharusnya dihalang daripada terus menikmati standard kehidupan yang pernah dinikmatinya semasa perkahwinan (lihat perenggan 5–6).

E (2) Keterangan menunjukkan responden pada mulanya merupakan seorang perempuan yang berperwatakan ringkas tetapi selepas berkahwin, dia perlu berbelanja lebih untuk menjadikannya rapi seperti yang digalakkan oleh pempetisyen. Oleh itu, adalah tidak janggal atau munasabah bahawa responden perlu terus mengekalkan dirinya di dalam standard tersebut. Apabila kedua pihak tinggal bersama, pempetisyen membayar untuk sewa rumah, kegunaan-kegunaan, ansuran kereta dan petrol yang kesemuanya perlu ditanggung oleh responden sejak tinggal berasingan. Oleh itu, RM1,000 setiap bulan sebagai nafkah adalah jumlah yang adil untuk membenarkan responden untuk terus berada di dalam standard yang pernah dinikmatinya. Jumlah tersebut mampu ditanggung oleh pempetisyen dan dengan mengambil kira fakta bahawa responden juga bekerja dan pempetisyen berhasrat untuk berkahwin semula (lihat perenggan 6–8).

H (3) Walaupun kereta tersebut dibeli oleh pempetisyen atas nama responden dan dikatakan untuk kegunaan responden semata-mata, keterangan menunjukkan bahawa kebanyakan masanya, pempetisyen menggunakan kereta tersebut. Responden jarang memandu kereta tersebut. Walaupun selepas responden dikatakan dihalau keluar daripada rumah kelamin, pempetisyen menyimpan kereta tersebut dan enggan memberikan kereta tersebut kepada responden. Memandangkan pempetisyen telah membayar ansuran kereta dan terus memiliki dan menggunakan kereta tersebut sehinggalah kereta tersebut ditarik milikannya, adalah adil dan munasabah bahawa pempetisyen seharusnya menanggung jumlah terhutang kepada bank yang sebenarnya berlaku akibat kemungkiran pempetisyen sendiri (lihat perenggan 10).]

I

Notes

For cases on wife, see 7(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 4019–4024.

Cases referred to

Borthwick (deceased), Re; Borthwick and Another v Beauvais and Others [1949] 1 All ER 472, Ch D (refd)

Koay Cheng Eng v Linda Herawati Santoso [2008] 4 MLJ 863; [2008] 4 CLJ 106, CA (refd)

Legislation referred to

Law Reform (Marriage and Divorce) Act 1976 ss 78, 86(3)

Thanasekharan Autherapady (A Thanasekharan) for the petitioner.

Ravin Woodhull (Kiren Ram alp Kartarram with him) (DM Rao & Co) for the respondent.

Chew Soo Ho JC:

[1] Petition of the petitioner ('husband') vide encl 1 was for the dissolution of his marriage with the respondent ('wife') with no order as to costs. The respondent in her affidavit in reply sworn on 10 December 2011, however, crossed petition for the dissolution of their marriage basing on her grounds as deposed in the same affidavit, payment of her maintenance by the petitioner in the sum of RM2,000 per month, payment of the sum due to Public Bank of RM13,415.21 and overdue interest in respect of a car Honda Accord No PCY 6930 which had been repossessed and auctioned, inter alia, and costs of the proceeding. At the commencement of the hearing of this case, both parties had agreed to the dissolution of marriage and agreed that the only issues left to be determined by the court were the maintenance of the respondent (wife) and the payment of the sums due to the Public Bank. After hearing the evidence of the petitioner and respondent who had respectively testified in court pertaining to the two issues in dispute on 1 June 2012, I have ordered the petitioner to pay maintenance to the respondent in the sum of RM1,000 a month for a period of four years from the date of this order and to pay the outstanding sum of RM13,415.21 due to Public Bank being the loan granted to buy the Honda Accord car No PCY which was registered in the name of the respondent. I append below my grounds for making the above orders.

MAINTENANCE

[2] Vide her witness statement produced and marked as exh D3, the respondent had listed out the expenses paid to her by the petitioner during their marriage to be RM200 for house rental, RM400 for groceries, RM180 for

A utilities, RM200 for petrol, RM1,000 for car instalment and RM300 for car servicing totalling RM2,280 per month. After separation, the respondent had purchased another car for which her monthly repayment of the car loan is RM450 per month which will expire in two years ie by 2014. The respondent added vide her oral evidence in court that before marriage, she was a simple person but after marriage, on the insistence by the petitioner that she had to be presentable, she had to spend her own income for cosmetics, clothing, fitness, perfume and hair saloon in the sum of about RM1,000 a month. She prayed that she is to be placed in the same lifestyle as she had been used to during the subsistence of her marriage with the petitioner. Although the respondent is gainfully employed with a salary of RM3,371 per month, she stated that she is just surviving with that income.

D [3] The petitioner is earning a salary of RM5,000 per month as a senior administrator. He admitted that during the marriage of both parties, he paid the rental of their matrimonial home in full, utilities in the sum of RM180 per month, groceries of RM400, car (PCY 6930) instalment of RM1,000 per month and petrol bill of RM500. The petitioner's main contention against maintenance for the respondent was that the respondent has earned an income which is sufficient to maintain herself. It was submitted that the RM5,000 earned by petitioner was not enough for him to run a family since he intends to remarry and that it is unfair to ask petitioner to pay maintenance again. As to the cosmetics, clothing etc which respondent is spending, the petitioner submitted that the respondent does not need all that.

F [4] The respondent submitted that she should be placed in a position to enjoy the same standard of living as she had during the existence of the marriage of RM1,000 a month citing the case of *Koay Cheng Eng v Linda Herawati Santoso* [2008] 4 MLJ 863; [2008] 4 CLJ 106. Since the respondent is renting a premises paying rental of RM600 per month, it was submitted that petitioner should bear half of the rental per month; in addition, half of the petrol which petitioner had previously been paying ie in the sum of RM250 as car petrol per month with the same amount for the utilities of RM180 per month be also paid by the petitioner. Together with the other expenses, she prayed for RM2,000 of maintenance per month. It was nevertheless further submitted that since there is no child born of the marriage, a clean break in the sum of RM90,000 (being RM1,500 x 5 years) was proposed.

I [5] From the evidence before the court, although the respondent is gainfully employed, the mere fact that she could possibly be self-sustained with her salary is not a key factor which disentitles her to maintenance. Section 78 of the Law Reform (Marriage and Divorce) Act 1976 ('LRA') provides that in determining the amount of any maintenance, the court shall base its assessment primarily on the means and needs of the parties regardless of the proportion such

maintenance bears to the income of the husband but shall have regard to the degree of responsibility which the court apportions to each party for the breakdown of the marriage. What is maintenance has been well explained by Harman J in the often quoted case of *Re Borthwick* (the deceased); *Borthwick (deceased), Re; Borthwick and Another v Beauvais and Others* [1949] 1 All ER 472 where His Lordship said:

... it is said that maintenance is the only thing which can be regarded. That does not mean that the court can only give the dependent just enough to put a little jam on her bread and butter. It has already been held that what is reasonable for one may not be reasonable for another. It must depend on the circumstances of the case ... the wife of a rich man is entitled to better provision for her maintenance than the wife of a poor one. Maintenance does not only mean the food a wife puts in her mouth. It also means her clothes, the house in which she lives, and the money which she is to have in her pocket, all of which vary according to the means of her husband. Maintenance cannot mean only mere subsistence.

[6] It is undoubted that both petitioner and the respondent are gainfully employed. It does not mean that when the respondent is gainfully employed earning RM3,000 + per month, there should not be any maintenance because she is self sustainable. Court must look into her needs, the needs that she has been living in the standard that she had enjoyed or she had been provided during her life together with the petitioner who had provided for her. Evidence of the respondent shows that she was initially a simple lady but after marriage she had to spend more to upkeep herself as encouraged by the petitioner to be presentable. Hence, I do not find it odd that respondent needs to continue to do so to maintain herself in that standard of upkeeping herself to use cosmetics, perfumes, going to saloons, buying clothings etc to maintain her status. For a lady to maintain herself to be presentable within the means is reasonable especially so in this case where it was the petitioner who had encouraged the respondent to be so. The respondent wife should not therefore be deprived from the position to enjoy the same standard of living as she had been during the existence of her marriage; *Koay Cheng Eng*.

[7] The petitioner is drawing a salary of RM5,000 a month. Apart from his own expenses, there is no clear evidence that his salary is insufficient for himself and to meet some payment of maintenance. During their living together, undisputed evidence shows that petitioner had been paying the rental, house utilities, car instalment and petrol for which the respondent will have to bear on her own since leaving apart, the respondent is 46 years old now.

[8] Balancing the means and needs of the parties, I am of the view that a sum of RM1,000 as maintenance for the respondent in the standard that she had been living will be a fair sum which is well within the means of the petitioner having taken into consideration the fact that the respondent is also gainfully

A employed and that the petitioner contemplates to remarry. I do not find a clean break in the sum of RM90,000 is within the means of the petitioner without any other evidence besides his monthly salary of RM5,000.

B [9] Consequently, I order the petitioner to pay the respondent maintenance in the sum of RM1,000 a month for a period four years from the date of order which does not violate the provision of s 86(3) of the LRA as it is not more than three years before the institution of the petition which was filed in September 2011. I find it fair to so order because petitioner had not made any payment at all ever since respondent was forced to leave the matrimonial home.

C
OUTSTANDING CAR LOAN DUE TO PUBLIC BANK BHD

D [10] The petitioner contended that the car was bought in the name of the respondent for her sole use. Thus, she should bear the outstanding sum of RM13,415.21 still due and owing to the said bank and all other interest accrued. The petitioner said in evidence that he was unable to pay the monthly car instalments which he had been paying though it was bought in the name of the respondent because he lost his job in 2009. However, as rightly pointed by
E learned counsel for the respondent in submission, the judgment obtained by the bank for the outstanding sum was in 2007 and not in 2009. The true intention and reason of the petitioner in not paying the monthly car instalment before the judgment was entered in 2007 is doubtful. It cannot be on account of his alleged unemployment in 2009. The petitioner had shown his EPF
F return showing that there were no contribution for a few months in 2009 but he had not produced any document prior to 2009 and particularly in the year 2007 to show his financial ability. Hence, whether the petitioner was indeed unable to pay the monthly instalment of the said car PCY 6930 in 2007 or before or that he intentionally refused or neglected to pay the same is best
G known to himself. Benefit of the doubt should nevertheless be given to the respondent that it was not and could not be due to the petitioner's loss of employment that he did not pay the car instalment resulting in the judgment in favour of the bank. Bereft of any evidence showing otherwise the reasonable inference to be drawn is that the petitioner was gainfully employment before
H 2009. There is no reason that he was unable to pay the car instalments. From the fact, although the said car was purchased by the petitioner in the name of the respondent allegedly for her sole use, the respondent's evidence showed that the petitioner was in fact using the said car most of the time apart from sending the respondent to work etc. The respondent had hardly driven the said car.
I Even after the respondent was allegedly forced out of the matrimonial home, the petitioner still kept the said car and refused to give it over to the respondent. Since the petitioner had been paying for the car instalments and had continued to be in possession and in use of the said car until it was repossessed by the bank in 2010, it is only just and reasonable that he should bear this outstanding sum

due to the bank which was in fact created by his default. In the circumstances, I hold that the petitioner should bear the outstanding sums due to the bank of RM13,415.21 and I so order the petitioner to pay this sum to the respondent. However, despite the petitioner having to pay this sum, it does not relieve the respondent in total as she may still be liable to some interest accrued. The petitioner should not complain as the respondent being the registered owner of the said car may still be liable to pay the interest accrued as she did share the use of the car.

CONCLUSION

[11] For the foregoing reasons, I order the petitioner to pay maintenance to the respondent in the sum of RM1,000 per month for four years from the date of the order and I further order the petitioner to pay to the respondent the sum of RM13,415.21 being the outstanding car loan due to Public Bank Bhd with costs of this proceeding.

Petitioner ordered to pay respondent RM1,000 per month maintenance for four years from date of order and RM13,415.21 being balance due under car loan, with costs.

Reported by Ashok Kumar